

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL SCOTT,

Plaintiff,

ORDER

v.

11-cv-90-bbc

LORRAINE MCCABE, NEAL CONLEY,
SCOTT PELOWSKI, PAUL THOMPSON,
MARLYN TINSLEY and MICHAEL KOCH,

Defendants.

In an order dated April 14, 2011, plaintiff Michael Scott's motion to waive the initial partial payment in this case was denied and he was granted an extension of time until May 6, 2011, in which to pay the \$0.03 initial partial payment of the fee for filing this action. The court has not received plaintiff's payment. Instead, plaintiff has filed a letter in which he again asks the court to waive the initial partial filing fee. Plaintiff's request will be denied and the case will be closed without prejudice.

As plaintiff was told in the April 14 order, the court cannot find that he lacks the means to pay an initial partial payment of the \$350 fee for filing this case. In fact, the Court of Appeals for the Seventh Circuit ruled in Newlin v. Helman, 123 F.3d 429, 435 (7th Cir.

1997), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000) and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), that a prisoner has “means” any time his trust fund account statement reveals periodic income. Although plaintiff believes that he will not be able to make an initial partial payment in this case, his trust fund account statement shows that he has means to do so because he had an average monthly balance of \$0.15 in his account at the time he filed his complaint. Therefore, I will deny plaintiff’s motion to waive the initial partial payment and close the case without prejudice.

Under the holding of Newlin, plaintiff will not be eligible for waiver of the initial partial payment under § 1915(b)(4) unless he submits a six-month trust fund account statement revealing an absence of periodic income for the full six-month period. If plaintiff is able to make an initial partial payment in the future or enough time elapses that a six month trust fund account statement would show that plaintiff has no means to make an initial partial payment, he may move to reopen this case.

ORDER

IT IS ORDERED that plaintiff Michael Scott’s request to waive the initial partial

payment is DENIED and this case is DISMISSED WITHOUT PREJUDICE.

Entered this 9th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge